IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 430 OF 2006

ISIBARS LIMITED ..... Petitioners

Mr. Darius J. Khanbatta with Iyyer i/b Udwadia & Udeshi for the Petitioners.

No Regional Director and Official Liquidator present.

CORAM : R.S. MOHITE, J.

DATE : 18TH AUGUST, 2006

P.C.

1) In this proceeding the sanction of the Court is sought to the reduction of the Share Capital of the Petitioner-Company, in accordance with the special Resolution passed at the extra ordinary Annual General Meeting held on 5th June. Vide the special Resolution, the Company has resolved that pursuant to the consent of the Shareholders of the Company by way of a Special Resolution passed in the Annual General Meeting held on 20th December 2004 and subject to the confirmation / approval by the High Court, the paid-up Equity Share Capital of the Company be reduced from Rs.24,27,00,000/- consisting of Rs.2,42,70,000/- equity

Shares of Rs.10/- each which are fully paid- up to Rs.2,42,70,000/- consisting of Rs.2,42,70,000/- equity shares of Rs.1/- each fully paid- up, by cancelling of Rs.9/- per share, which capital has been lost and is unrepresented by available assets.

2) In the Petition, it is stated that the creditors of the Petitioner-Company namely the lenders, financial institutions and bankers have at their meetings held on 4th February 2004 approved the restructuring proposal and revised it at their meeting held on 17th March 2006, which provides that the share capital of the Company should be reduced in the manner stated above, consequent to the CDR Scheme and for which separate reduction proceedings will be adopted. Consequent to the decision taken by the CDR Empowered Group in the meeting dated 17th March, 2006 on the request made by the Company, particulars of the write-down of the equity were provided by the CDR vide their letter dated 15th June, 2006 and the write- down was in the proportion as contained in the special Resolution.

3) It is specifically averred in the Petition that the reduction of capital does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital and the interest of creditors are not affected in any manner by the said reduction of

capital. In fact the reduction of capital is sought to be affected in view of the decision taken by the creditors themselves. The petition was duly advertised and no objectionhas been received.

4) It was pointed out that in the petition itself there is a prayer for a direction that the provisions of Section 101(2) of The Companies Act, 1956 should not be applied to the proposed reduction.

5) Reliance is placed on the Judgment of this Court in Rallis India Limited, in which this Court has observed :

> " that if there is no diminution of liability or payment to any shareholder of any paid up capital, the interest of the creditors is not likely to be affected and therefore it is not necessary for the Company to comply with the procedure prescribed under Section 101 (2) of The Companies Act, 1956".

6) Taking into consideration aforesaid facts, I find no reason as to why the Company Petition should not be allowed. In the circumstances, the requirement of Section 101(2) of The Companies Act is dispensed with and the petition is made absolute in terms of prayer clauses (a) to (e).

(R.S. MOHITE, J.)